

## **REMARKS**

In the Final Office Action, the Examiner rejected claims 1-28. By the present paper, Applicants have amended claims 1-17 and 19-28 and added new claim 29. These amendments do not add any new matter. For example, the specification states, “The thumb 52 of the user's hand 50 is placed on the scanning surface 42 to activate the proximity pin to send a signal, if the user is authenticated, to a system interface.” Specification, ¶ [0021] (emphasis added). Claims 1-29 are currently pending and are believed to be in condition for allowance. In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

### **Rejections Under 35 U.S.C. § 101**

In the Final Office Action, the Examiner rejected claims 26-28 under Section 101 as being directed to non-statutory subject matter. While Applicants do not necessarily agree with the Examiner, as set forth in the Response to Final Office Action submitted on December 10, 2007, Applicants have amended the present claims as set forth above. In view of the foregoing amendments, Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 101 and allow the claims.

### **Rejections Under 35 U.S.C. § 102**

In the Final Office Action, the Examiner rejected claims 1-3, 5, 23, and 26 under 35 U.S.C. § 102 as being anticipated by Hamid et al. (U.S. Patent No. 6,848,052) and rejected claims 15-18, 20, 21, 23, 25, and 28 under 35 U.S.C. § 102(e) as being anticipated by Uchida (U.S. Patent No. 6,751,734). Of these, claims 1, 15, 20, 23, 25, 26, and 28 are independent. Applicants respectfully traverse these rejections.

### ***Legal Precedent and Guidelines***

Anticipation under section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under section 102, every

element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Accordingly, Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. The prior art reference also must show the identical invention “in as complete detail as contained in the ... claim” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989).

***Claim Features of Independent Claims 1, 23, and 26 Missing from Hamid***

The Hamid reference generally discloses a wireless portable biometric device for communicating with a plurality of devices. *See* Hamid, Abstract. A user may scroll through a list of available devices to select one, and then scroll through a list of processes which that device may perform. Hamid, col. 5, lines 3-10; *see also* Figure 4. Accordingly, the wireless device sends and receives signals from the devices to enable user selection of the desired device and/or function. The user may then scan a fingerprint on the biometric device, and if the fingerprint is recognized the wireless biometric device enables access to the device and/or function. Hamid, col. 5, lines 18-26; *see also* Figure 4. Notably, the wireless portable biometric device communicates with the protected devices before the user is authenticated.

In contrast, amended independent claim 1 recites, *inter alia*, “communicating with the system via the wireless proximity detection device only after authenticating the user.” (Emphasis added). By permitting communication with the system only after the user is authenticated, the present invention provides a further security measure. Clearly, the Hamid reference does not teach communicating with the system only after authentication, as the biometric device specifically seeks out available devices which the user may select

to log into. Accordingly, the Hamid reference does not anticipate independent claim 1 or its dependent claims.

Similarly, amended independent claim 23 recites, *inter alia*, “means for activating the wireless proximity detection device only after authenticating the user,” and amended independent claim 26 recites, *inter alia*, “a routine for activating the wireless proximity detection device only after authenticating the user.” (Emphasis added). As recited in the present claim, the wireless proximity detection device is not even activated before the user is authenticated, much less communicating with a plurality of devices as in Hamid. As such, the Hamid reference clearly does not anticipate independent claims 23 or 26.

***Claim Features of Independent Claims 15, 20, 25, and 28 Omitted from Uchida***

The Uchida reference generally describes an authentication system which includes an authentication execution device in communication with a portable biometric terminal. Uchida, Abstract. The portable device is independent of the authentication executing device. Uchida, col. 2, lines 25-30; *see also* Figure 1. In addition, the authentication executing device may assure the information processing system that the user is the authorized user (i.e., the authentication executing device authenticates the user to the system). Uchida, col. 10, lines 26-30. Furthermore, proximity detection is not described in the cited reference. While there may be some type of detection device in the described system, Uchida does not disclose any details of such a device.

Amended independent claim 15 recites, *inter alia*, “activating a proximity detection device only after satisfying a required biometric authentication at the proximity detection device.” (Emphasis added). As discussed above, the Uchida reference teaches authentication at an independent authentication executing device, not the portable biometric device. Furthermore, the cited reference fails to disclose when or under what

conditions a proximity detection device is activated. Accordingly, the cited reference does not anticipate independent claim 15 or its dependent claims.

Additionally, amended independent claim 20 recites, *inter alia*, “a processing module disposed within the wireless biometric device for conducting the biometric measurement of the user, authenticating the user, and transmitting a wireless communication only after authenticating the user to detect the secured system and to provide an authenticated user identification code to the secured system.” (Emphasis added). Again, the portable biometric terminal of Uchida does not contain a processing module for authenticating the user. Rather, authentication occurs at the authentication executing device. In addition, detection of the secured system is not discussed in the cited reference, therefore it does not teach detecting the secured system after authenticating the user. Thus, the cited reference does not anticipate independent claim 20 or its dependent claims.

Amended independent claim 25 recites, *inter alia*, “means for detecting proximity of a user only after a required biometric measurement at a biometric device, wherein the means for detecting proximity comprises the biometric device.” (Emphasis added). Similarly, amended independent claim 28 recites, *inter alia*, “a routine for activating a proximity detection device in response to a user satisfying a required biometric measurement.” (Emphasis added). As discussed above, the Uchida reference fails to address the details of detecting proximity to a secured system as recited in the present claim. The cited reference therefore does not disclose detecting proximity after a biometric measurement or activating proximity detection in response to a biometric measurement. Accordingly, the cited reference does not anticipate independent claims 25 or 28.

For at least these reasons, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 102.

**Claim Rejections under 35 U.S.C. § 103(a)**

In the Final Office Action, the Examiner rejected claims 4, 9-12, 24, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Uchida; rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Wong et al. (U.S. Patent No. 6,260,021); rejected claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Kuth (U.S. Patent No. 6,684,093); rejected claims 13 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Uchida and in view of Wong; rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Uchida and in view of Kuth; and rejected claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Uchida in view of Wong. Of these, claims 9, 24, and 27 are independent. Applicants respectfully traverse these rejections.

***Legal Precedent***

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish a *prima facie* case, the Examiner must show that the combination includes all of the claimed elements, and also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). Moreover, the Supreme Court has recently stated that the obviousness analysis should be explicit. See *KSR Int'l Co. v. Teleflex, Inc.*, 82 U.S.P.Q.2d 1385 (U.S. 2007) (“[R]ejections based on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”) (quoting *In re Kahn*, 441 F.3d 977,988 (Fed. Cir. 2006)).

***Claim Features of Independent Claims Omitted from the Combined References***

Independent claims 9, 24, and 27 were rejected as obvious over the Hamid reference in view of the Uchida reference. As described above, the Hamid reference

teaches an authentication system in which a biometric device communicates with a plurality of devices before the user is authenticated. The Uchida reference fails to disclose authentication of a user at the wireless biometric device. Furthermore, both references fail to obviate the shortcomings of the other.

Accordingly, amended independent claim 9 recites, *inter alia*, “sending a wireless signal from the wireless biometric device to a system device of the system after authenticating the user to detect the system and to provide a user identification code to the system.” (Emphasis added). Amended independent claim 24 recites, *inter alia*, “means for recognizing biometric measurements of the user and authenticating the user with a wireless biometric device to permit detection of the system via the wireless biometric device and to permit access by the user to the system.” (Emphasis added). Amended independent claim 27 recites, *inter alia*, “a routine for recognizing biometric measurements of the user and authenticating the user with the wireless biometric device to permit the wireless biometric device to detect the system.” (Emphasis added).

As can be seen in the cited passages from the independent claims, system detection does not occur until after authentication. Because neither the Hamid nor the Uchida reference discloses such a feature, these references, taken alone or in combination, fail to obviate the independent claims. For at least these reasons, the cited references do not anticipate independent claims 9, 24, or 27, or their dependent claims. Accordingly, Applicants respectfully request removal of the rejections under 35 U.S.C. § 103.

### **New Claim**

New claim 29 recites, *inter alia*, “wherein the wireless proximity detection pin comprises a Bluetooth mobility pin.” (Emphasis added). While claim 29 is believed to be allowable based on its dependence from an allowable base claim, Applicants also respectfully point out that neither the Hamid nor the Uchida reference discloses using a Bluetooth mobility pin for wireless proximity detection.

**Conclusion**

Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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